IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 594 to 792 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

VIRAM RAMA

Appearance:

FIRST APPEALS NO. 594 to 693 of 1992
MR PG DESAI, GOVERNMENT PLEADER for Appellants
NOTICE SERVED for Respondent No. 1

FIRST APPEALS NO. 694 to 750 of 1992
MR UA TRIVEDI, A.G.P. for appellants.
NOTICE SERVED for Respondent no.1

FIRST APPEALS NO. 751 to 792 of 1992
MR BD DESAI, A.G.P. for Appellants.
NOTICE SERVED for Respondent no.1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 24/12/98

ORAL JUDGEMENT

(Per :Panchal, J.)

All these appeals, which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated December 21, 1990, rendered by the learned Extra Assistant Judge, Junagadh at Porbandar in Land Acquisition Reference Cases No. 1/90 to 199/90 and, therefore, we propose to dispose of all these appeals by this common judgment.

2. The Executive Engineer, Junagadh Irrigation Project, Junagadh Division had proposed to the State Government by a letter dated November 19, 1977 to acquire certain lands of village Miti, Taluka : Mangrol, District : Junagadh, as those lands were likely to be submerged due to construction of dam under Amipur Irrigation Scheme. On scrutiny of the said proposal, the State Government was satisfied that certain lands of village Miti, Taluka : Mangrol were likely to be submerged due to construction of the dam under Amipur Irrigation Scheme. Therefore, notification under section 4 of the Land Acquisition Act, 1894 ("the Act" for short) was issued, which was published in Government Gazette on January 10, 1978. The land owners were served with notices under section 4 of the Act. They had filed objections against proposed acquisition. After considering the objections raised by the land owners,the Land Acquisition Officer had forwarded his report to the State Government as contemplated by section 5(A)(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands specified in the notification which was issued under section 4(1) of the Act needed to be acquired, as they were to be submerged due to construction of dam under Amipur Irrigation Scheme. Accordingly, declaration under section 6 of the Act was made, which was published in the Official Gazette on December 26, 1978. The interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. Having regard to the materials placed before him, the Land Acquisition Officer by his award dated March 30, 1979 offered compensation to the claimants at the rate of Rs. 20/- per Are for new tenure Jirayat dry lands, Rs. 30/- per Are for new tenure Jirayat irrigated lands, Rs. 50/- per Are for old tenure Jirayat dry lands, Rs. 75/- per Are for old Jirayat irrigated lands. He also offered compensation to the claimants for waste lands at the rate of Rs. 1/- per

Are. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. They, therefore, made applications in writing and required the Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Junagadh, which were numbered as Land Acquisition Reference Cases No. 1/90 to 199/90. In the Reference Applications, the claimants pleaded that in view of the sale instances, which were produced by them before the Land Acquisition Officer, the claimants should have been awarded higher compensation. They averred that they should have been awarded compensation at the rate of Rs. 937.50 ps. per Are. It was claimed that an error was committed by the Land Acquisition Officer in treating certain lands as non-irrigated lands and in view of the huge amount which was spent by the claimants for developing the lands, sufficient compensation ought to have been paid to them.

3. In all the Land Acquisition Reference Cases, common reply was filed on behalf of the present appellant. In the reply, it was claimed that having regard to the nature of the lands acquired and income as well as potentiality,the offer of compensation made by the Land Acquisition Officer should not be treated as inadequate and the reference applications should be rejected. What was claimed in the reply was that the Land Acquisition Officer after taking into consideration the relevant materials including sale instances, had awarded compensation to the claimants which was just and reasonable and, therefore, the reference applications should not be entertained.

4. In view of the pleadings of the parties, necessary issues for determination were raised by the Reference Court. The claimants examined, (1) Viram Ramabhai at Exh.11, (2) Samat Viram at Exh.12, (3) Jethabhai Danabhai at Exh.13, (4) Dudabhai Punjabhai at Exh.14, (5) Meghabhai Somabhai at Exh.15, (6) Ranabhai Devayat at Exh.16, (7) Naranbhai Rama at Exh.17, (8) JIvabhai Hadabhai at Exh.19, (9) Ramabhai Thebabhai atExh.18, (10) Bhima Bala at Exh.20, (11) Deva Chana at Exh.21 and (12) Nagajan Pola at Exh.22, to substantiate their claim that they were entitled to higher compensation for the acquired lands. The witnesses also produced sale deeds at Exhs. 25, 26 & 27 in support of the case of the claimants that they were entitled to compensation at the rate of Rs. 937.50 ps. per Are. The witnesses also produced previous award of the Court, which was rendered in Land Acquisition Reference Case No.

32/81 at Exh.28 whereby the Reference Court had determined market value of the lands situated in this very village at the rate of Rs. 125/- per Are for old tenure jirayat irrigaged lands, Rs. 187.50 ps. per Are for irrigated i.e. bagayat land of old tenure, Rs. 110/- per Are for new tenure jirayat irrigated lands and Rs. 170/- per Are for bagayat lands of new tenure. It is relevant to note that neither oral nor documentary evidence was adduced on behalf of the present appellants. The Reference Court took into consideration (1) the award rendered by the Land Acquisition Officer, (2) sale deeds produced by the witnesses as well as previous award of the Reference Court and deduced that the claimants were entitled to compensation at the rate of Rs. 55/- per Are for new tenure jirayat dry lands, Rs. 110/- for new tenure jirayat irrigated lands, Rs. 65/- per Are for old tenure jirayat dry land, Rs. 125/- per Are for old tenure jirayat irrigated lands, Rs. 10/- per Are for waste lands, by common award dated December 21, 1990, giving rise to the present appeals.

5. Mr. U.A.Trivedi, learned A.G.P. who has appeared on behalf of the appellant, has taken us through the entire evidence on record. The learned Counsel for the appellant submitted that photostate copies of the slae deeds which were produced at Exhs. 25 to 27 should not have been relied on by the Reference Court for the purpose of ascertaining market value of the lands acquired in this case, as neither vendor, nor vendee nor scribe of the deeds was examined to provee the contents of the deeds. It was claimed that the award of the Land Acquisition is always treated in the eye of law as an offer made by the said officer to the claimants and in absence of any corroborative evidence being on record, the Reference Court should not have relied on the award rendered by the Land Acquisition Officer for the purpose of evaluating market value of the lands acquired in this case. The learned Counsel for the appellant contended that the previous award of the Court did not furnish guidance for the purpose of ascertaining market value of the lands acquired in this case and, therefore, should have been ignored by the Reference Court. What was highlighted was that the Land Acquisition Officer had made award on March 30, 1979 and as additional compensation could not have been awarded to the claimants under section 23(1-A) of the Act, the award should be modified. It was also stressed by the learned Government Counsel that the Reference Court was not justified in directing the appellant to pay interest at the rate of 9% per annum on the amount of solatium for the first year and at the rate of 15% per annum for the subsequent

period on that amount till the amount is paid and, therefore, that direction should be set aside.

6. We may state that the respondents are duly served,but none of them has appeared either in person or through advocate.

7. Having scanned the evidence on record, we are of the opinion that the Reference Court was not justified in placing reliance on the award of the Land Acquisition Officer for the purpose of coming to the conclusion that the claimants were entitled to compensation at the rate of Rs. 55/- per Are for new tenure jirayat dry land, Rs.110/- per Are for new tenure jirayat irrigated land, Rs. 65/- per Are for old tenure jirayat dry land, Rs. 125/- per Are for old tenure jirayat irrigated land and Rs. 10/- per Are for waste land. It hardly needs to be emphasised that the award of the Land Acquisition Officer perse is not evidence relating to market value of the lands acquired. An award of the Land Acquisition Officer is not per se sufficient evidence of value of lands unless supported by evidence of the basis and grounds ofthe award. The sale instances which were referred to by the Land Acquisition Officer in his award should not have been made basis for the purpose of ascertaining market value of the lands acquired in this case, more particularly when the contents of those sale deeds were not proved by examining either vandor or vendee or scribe of those documents. Similarly, sale deeds which were produced at Exhs. 25 to 27 should not have been taken into consideration for the purpose of determining the market value of the lands acquired in this case, more particularly when neither vendor nor vendee was examined by the claimants to prove the contents of sale deeds. It was not brought on record of the case by the claimants that those transactions were bonafide or that they related to the lands which were situated near the lands acquired or that the acquired lands were possessed of advantageous features which were present in case of those lands. Therefore, in our view, the learned Counsel for the State Government is right in urging that the Reference Court was not justified in placing reliance either on the award of the Land Acquisition Officer or the sale deeds for the purpose of ascertaining market value of the lands acquired in this case. However, as noted earlier,the claimants also produced award of the Reference Court at Exh.28. The said award was rendered in Land Acquisition Reference Case No. 32/81. It was in respect of lands situated in this very village i.e. Miti, Taluka : Mangrol. The lands acquired were bagayat lands. In that case, notification under section 4(1) of

the Act was published on January 10, 1978 i.e. the date on which notification under section 4(1) of the Act was published in the present case. The evidence of the witnesses examined on behalf of the claimants indicates that the lands acquired earlier were similar to the lands acquired in the present case and their fertility was also similar. The appellants did not adduce any evidence to show that the lands acquired in the earlier case were more fertile or had more advantages in comparison to the lands acquired in the present case. In absence of any material on record as regards distinctive features and differentiation between the quality of two lands, we are of the opinion that no error was committed by the Reference Court in placing reliance on the previous award for the purpose of ascertaining market value of the lands acquired in the present case. It is well settled principle of law that previous award of the Court in respect of lands situated in the same village or adjacent lands and which has become final can be taken into consideration for the purpose of ascertaining market value of the lands acquired in another case. The Reference Court has recorded a finding that the previous award has become final, as no appeal against the same was preferred in the High Court. This finding is not challenged by the learned Counsel for the appellant. As the previous award of the Reference Court furnishes guidance for the purpose of evaluating market value of the lands acquired in this case, we are of the opinion that determination of market value by the Reference Court on the basis of said award, cannot be said to be erroneous so as to warrant interference in the present appeals.

8. The Reference Court has directed the appellants to pay additional compensation as contemplated under section 23(1-A) of the Act. It is an admitted fact that the Land Acquisition Officer had made award on March 30, 1979; whereas section 23(1-A) was introduced in the statute book by section 30 of Act 68 of 1984. Section 30 related to transitional provisions wherein it was provided that provisions of sub-section (1-A) of Section 23 shall be deemed to have applied, also to, and in relation to every proceeding for the acquisition of land under the Principal Act pending on the 30th day of April, 1982 which was the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the people, in which no award was made by the Collector before that date. The Constitution Bench of the Supreme Court has resolved the dispute as to whether Section 23(1-A) of the Act would apply to the case where award is made before April 30, 1982 and held in Union of India v.

Raghubir Singh (dead) by L.Rs. (1989)2 SCC 754 that section 23(1-A) of the Act would not apply if the award was made by the Land Acquisition Officer before April 30, 1982. That view has been followed in several reported decisions and in K.S.Paripoornaa v. State of Kerala and others, AIR 1995 SC 581, it is held by the Supreme Court in Para-6 as under :-

> "The question relating to the payment of 12% additional compensation under Section 23(1-A) over the excess compensation has already been covered by the Constitution Bench Judgment of this Court in K.S.Paripoornan v. State of Kerala, ((1994)6 JT (SC) 182). Therefore, the appellant is not entitled to this benefit as the Collector made the award prior to the date of the Amendment Act came into force."

In view of the clear principle propounded by the Supreme Court, we are of the opinion that the Reference Court was not justified in directing the appellant to pay additional compensation under section 23(1-A) of the Act over the excess compensation determined under section 23(1) of the Act and, therefore, that direction will have to be set aside.

9. Similarly, we notice that the Reference Court has directed the appellants to pay interest on solatium at the rate of 9% per annum for the first year and at the rate of 15% per annum for the subsequent period till the amount is paid. In State of Maharashtra v. Maharau Srawan Hatkar, Judgment Today 1995(2) SC 583, the Supreme Court has held that additional amounts envisaged under sub-sections (1-A) and (2) of Section 23 are not part of the component of the compensation awarded under sub-section (1) of Section 23 of the Act and, therefore, direction to pay interest at the rate of 9% per annum for the first year and at the rate of 15% per annum for the subsequent period cannot be given. The pertinent observations made by the Supreme Court in Para-7 of the reported decision are as under :-

> "It would thus, be seen that the additional amounts envisaged under sub-ss.(1-A) and (2) of S.23 are not part of the component of the compensation awarded under sub-s.(1) of s.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court

is devoid of power to award any interest under s.28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the Court as envisaged under the proviso."

Having regard to the principle laid down by the Supreme Court, we are of the view that the Reference Court was not justified in directing the appellants to pay interest on solatium at the rate of 9% per annum for the first year and at the rate of 15% per annum for the subsequent period till the amount is paid and this direction will have also be set aside.

For the foregoing reasons, all the appeals filed by the appellants are partly allowed. The finding recorded by the Reference Court that the claimants are entitled to compensation at the rate of Rs. 55/-per Are for new tenure jirayat dry lands, Rs. 110/- per Are for new tenure jirayat irrigated lands, Rs. 65/- per Are for old tenure jirayat dry lands, Rs. 125/- per Are for old tenure jirayat irrigated lands and Rs. 10/- per Are for waste lands, is hereby upheld and confirmed. The direction given by the Reference Court to the appellant to pay interest on solatium at the rate of 9% per annum for the first year and at the rate of 15% per annum for the subsequent period till the amount is paid is hereby set aside. Similarly, the direction to pay additional compensation under section 23(1-A) over the excess compensation found payable under section 23(1) of the Act, is also set aside. The appeals are allowed, with no order as to costs. Office is directed to draw decree in terms of this judgment.

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